

Jeffrey S. Leonard (SBN 003809)
Jeffrey.Leonard@SacksTierney.com
Evan F. Hiller (SBN 028214)
Evan.Hiller@SacksTierney.com
SACKS TIERNEY P.A.
4250 N. Drinkwater Blvd., 4th Floor
Scottsdale, AZ 85251-3693
Telephone: 480.425.2600
Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Austin and Logan Flake, husband and wife,
Plaintiffs,
v.
Joseph Michael Arpaio; et al.,
Defendants.

No. CV-15-01132-PHX-NVW

MOTION TO PRECLUDE PLAINTIFFS' LATE SUBMISSIONS

Defendants hereby respectfully move the Court for an order prohibiting Plaintiffs from offering proposed jury instructions, voir dire questions, verdict forms, and designated deposition testimony. Such an order is warranted as a consequence of Plaintiffs' failure to comply with the Court's Order Setting Final Pretrial Conference (Doc. 135), as modified (Docs. 139, 141), and is supported by the below Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

On August 31, 2017, the Court issued an Order Setting Final Pretrial Conference (Doc. 135) (the “Conference Order”). Although the Order was subsequently modified to reflect new deadlines pursuant to an earlier trial date (Doc. 139) and to reschedule the pretrial conference by one day (Doc. 141), the obligations imposed upon the parties by the Conference Order did not change. Per the Conference Order (as modified), the parties were to exchange drafts of the Proposed Final Pretrial Order (the “Pretrial Order”) no later than October 13, 2017. *See* Doc. 139. Plaintiffs have the burden of initiating communications concerning the Pretrial Order. *See* Doc. 135 at 2.

1 One day after the deadlines were amended, Defendants reached out to Plaintiffs to
2 remind them that Plaintiffs bore the burden of coordinating the Proposed Final Pretrial
3 Order, and to ask how Plaintiffs planned to go about doing so. *See* J. Leonard e-mail to S.
4 Montoya (Sept. 13, 2017), attached as **Exhibit A**. Plaintiffs acknowledged their obligation,
5 under the Order, to provide their portions of the Final Proposed Pretrial Order by October
6 13, 2017. *See* S. Montoya e-mail to J. Leonard (Sept. 13, 2017), attached as **Exhibit B**.

7 On October 13, 2017, Defendants provided draft portions of the Pretrial Order, draft
8 proposed jury instructions, a list of Defendants' exhibits, and a copy of the one
9 demonstrative exhibit not previously exchanged between the parties. *See* E. Hiller e-mail
10 to S. Montoya (Oct. 13, 2017), attached as **Exhibit C** (without attachments). Plaintiffs did
11 not provide any of the information required by the Conference Order at that time. *See* J.
12 Leonard e-mail to S. Montoya (Oct. 16, 2017), attached as **Exhibit D**.

13 On October 17, 2017, four days after the deadline for doing so, Plaintiffs finally
14 provided their draft portions of the Pretrial Order and trial exhibit list. *See* A. Roll e-mail
15 to J. Leonard (Oct. 17, 2017), attached as **Exhibit E** (without attachments). Plaintiffs'
16 drafts were missing (1) designation of portions of depositions to be read or submitted at
17 trial; (2) proposed forms of verdict; (3) proposed voir dire questions; and (4) proposed jury
18 instructions. Defendants notified Plaintiffs of these deficiencies, and requested a meeting
19 to confer regarding the Pretrial Order. *See* E. Hiller e-mail to S. Montoya (Oct. 19, 2017),
20 attached as **Exhibit F**; *see also* E. Hiller e-mail to S. Montoya (Oct. 20, 2017), attached as
21 **Exhibit G** (further follow-up and request to meet and confer).

22 Counsel for the parties finally met and conferred at 5:00 p.m. on Monday, October
23 2017. *See* E-mails between J. Leonard and S. Montoya (Oct. 23, 2017), attached as
24 **Exhibit H**. At that time, Defendants' counsel again highlighted the information that
25 Plaintiffs had not provided, and requested that Plaintiffs provide that information as soon as
26 possible.¹ Plaintiffs' counsel acknowledged that he needed to provide that information and
27 committed to doing so.

28

¹ Plaintiffs' counsel did represent to Defendants' counsel that he would be designating at

1 Defendants have repeatedly requested this information from Plaintiffs, noting that
2 they were running out of time to respond to Plaintiffs' proposals. *See* J. Leonard e-mails to
3 S. Montoya (Oct. 25, 2017), attached as **Exhibit I**. To date, Defendants still have not
4 received Plaintiffs' proposed deposition designations, verdict forms, voir dire questions, or
5 jury instructions.

6

7 **II. ARGUMENT**

8 The Conference Order notes that "the Court will not allow the parties to offer any
9 exhibit, witness, or other evidence that was not disclosed in accordance with the provisions
10 of this Order and the Federal Rules of Civil Procedure and listed in the Proposed Final
11 Pretrial Order, except to prevent manifest injustice." *Id.* The Court has broad discretion to
12 enforce its orders through appropriate sanctions. *See Fed.R.Civ.P. 37; Wyle v. R.J.*
13 *Reynolds Indus., Inc.*, 709 F.2d 585, 589 (9th Cir. 1983).

14 Plaintiffs have not disclosed to Defendants their proposed designations of deposition
15 testimony, voir dire questions, forms of verdict, and jury instructions. Plaintiffs were
16 obligated to provide these on October 13, with Defendants required to respond by October
17 27. Instead of two weeks to address Plaintiffs' proposals, Defendants will have at most one
18 day. As a practical matter, Defendants simply do not have sufficient time to meaningfully
19 respond to any of these currently undisclosed proposed materials, even if they were
20 provided today. The prejudice to Defendants is obvious and material, and can be cured
21 only by prohibiting Plaintiffs from offering the untimely material at all.

22

23 **III. CONCLUSION**

24 For the above reasons, Defendants respectfully request that the Court preclude
25 Plaintiffs from designating any deposition testimony of Marie Trombi or Joseph Arpaio for

26

27 least those portions of the depositions of Joseph Arpaio and Marie Trombi previously
28 attached to his summary judgment papers, "as a starting point."

1 presentation at trial, and from offering proposed voir dire questions, jury instructions, and
2 verdict forms.

3 DATED October 26, 2017.

4 SACKS TIERNEY P.A.

5 */s/ Jeffrey S. Leonard*
6 Jeffrey S. Leonard
7 Evan F. Hiller
8 Attorneys for Defendants

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SACKS TIERNEY P.A., ATTORNEYS
4250 NORTH DRINKWATER BOULEVARD
FOURTH FLOOR
SCOTTSDALE, ARIZONA 85251-3693

1
2 CERTIFICATE OF PERSONAL CONSULTATION
3

4 The undersigned hereby certifies that on October 23, 2017, counsel for the parties
5 met via teleconference and made sincere efforts to resolve issues relating to the Proposed
6 Final Pretrial Order, including the deficiencies in Plaintiffs' submissions identified by
7 Defendants and discussed in the above motion. Defendants' counsel has also
8 communicated several times with Plaintiffs' counsel in a further effort to resolve the
9 deficient and missing submissions, as shown by the e-mails attached to the motion.
10

11 _____
12 /s/ *Jeffrey S. Leonard*
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SACKS TIERNEY P.A., ATTORNEYS
4250 NORTH DRINKWATER BOULEVARD
FOURTH FLOOR
SCOTTSDALE, ARIZONA 85251-3693

CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2017, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Stephen Montoya
Richard Trujillo
MONTOYA, LUCERO & PASTOR, P.A.
The Great American Tower
3200 North Central Avenue, Suite 2550
Phoenix, AZ 85012
Attorneys for Plaintiffs

/s/ Mary Chapa

SACKS TIERNEY P.A., ATTORNEYS
4250 NORTH DRINKWATER BOULEVARD
FOURTH FLOOR
SCOTTSDALE, ARIZONA 85251-3693

Exhibit A

From: [Leonard, Jeffrey](#)
To: ["Steve Montoya"](#)
Cc: [Hiller, Evan F.](#)
Subject: Flake [IWOV-EMM.FID592013]
Date: Wednesday, September 13, 2017 12:48:00 PM
Attachments: [image001.jpg](#)
 [image002.jpg](#)

Steve –

By the Amended Order Judge Wake entered yesterday, the final Proposal Final Pretrial Order is due on October 27, and so based on the original Order Setting Final Pretrial Conference we are presumably to exchange drafts no later than October 13.

I see that paragraph 5 of the original order says that “[t]he Plaintiff(s) shall have the burden of initiating communications concerning the Proposed Final Pretrial Order.” Can you tell me how you’re going to go about that, and when we can expect an initial draft?

Also, you had mentioned that you would be interested in a mediation. I have discussed that with my clients, and before the county decides whether it’s worth spending time and money on that they would like to know what your current demands are. If you will let me know that, I can have a more informed discussion of the issue.

Jeffrey S. Leonard
Attorney
P. 480.425.2652 | F. 480.425.4952
C. 602.799.2376
Jeffrey.Leonard@SacksTierney.com

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-
-
SacksTierney P.A.
4250 N. Drinkwater Blvd., Fourth Floor
Scottsdale, AZ 85251
www.sackstierney.com
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Exhibit B

From: stephen@montoyalawgroup.com
To: Leonard_Jeffrey
Cc: Hiller_Evan_F.;_april@montoyalawgroup.com
Subject: RE: Flake [IWOV-EMM.FID592013]
Date: Wednesday, September 13, 2017 5:53:40 PM
Attachments: [image002.jpg](#)

Jeff, we will email you our portions of the final pretrial order by October 13 in accordance with the Court's order.

----- Original Message -----

Subject: Flake [IWOV-EMM.FID592013]
From: "Leonard, Jeffrey" <Jeffrey.Leonard@SacksTierney.com>
Date: Wed, September 13, 2017 12:47 pm
To: 'Steve Montoya' <stephen@montoyalawgroup.com>
Cc: "Hiller, Evan F." <Evan.Hiller@sackstierney.com>

Steve –

By the Amended Order Judge Wake entered yesterday, the final Proposal Final Pretrial Order is due on October 27, and so based on the original Order Setting Final Pretrial Conference we are presumably to exchange drafts no later than October 13.

I see that paragraph 5 of the original order says that “[t]he Plaintiff(s) shall have the burden of initiating communications concerning the Proposed Final Pretrial Order.” Can you tell me how you’re going to go about that, and when we can expect an initial draft?

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Jeffrey S. Leonard
Attorney
P. 480.425.2652 | F. 480.425.4952
C. 602.799.2376
Jeffrey.Leonard@SacksTierney.com

-



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<!--[if !vml]-->
4250 N. Drinkwater Blvd., Fourth Floor
Scottsdale, AZ 85251
www.sackstierney.com
a Member of **MERITAS** Law Firms Worldwide

<!--[endif]-->SacksTierney P.A.

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Exhibit C

From: [Hiller, Evan F.](#)
To: ["stephen@montoyalawgroup.com"](mailto:stephen@montoyalawgroup.com)
Cc: [Leonard, Jeffrey](#)
Subject: Defendants_ Portions of Joint Final Pretrial Order.DOCX;Joint Proposed Jury Instructions.DOCX;Defendants Exhibit list.DOCX;Demonstrative - Dog Chart.DOCX [ST-EMM.FID592016]
Date: Friday, October 13, 2017 3:45:58 PM
Attachments: [Joint Proposed Jury Instructions \(2\).DOCX](#)
[image001.gif](#)
[Defendants Exhibit list \(2\).DOCX](#)
[Defendants_ Portions of Joint Final Pretrial Order.DOCX](#)
[Demonstrative - Dog Chart \(2\).DOCX](#)
[Demonstrative - Dog Chart \(2\).DOCX](#)

Steve,

Attached please find a draft Joint Final Pretrial Order with Defendants' sections filled in; a draft of Joint Proposed Jury Instructions with Defendants' portions filled in; a preliminary list of Defendants' exhibits; and a first draft of the final listed exhibit (a demonstrative chart with information about the dogs in Plaintiffs' care on June 19-20, 2014).

Regards,
~Evan

Evan F. Hiller
Attorney
P. 480.425.2661 | F. 480.425.4961
Evan.Hiller@SacksTierney.com



Sacks Tierney P.A.
4250 N. Drinkwater Blvd., Fourth Floor
Scottsdale, AZ 85251
www.sackstierney.com
a Member of **MERITAS** Law Firms Worldwide

Exhibit D

From: [Leonard, Jeffrey](#)
To: stephen@montoyalawgroup.com
Cc: [Hiller, Evan F.](#); april@montoyalawgroup.com
Subject: Re: Flake [IWOV-EMM.FID592013]
Date: Monday, October 16, 2017 6:56:37 PM
Attachments: [image002.jpg](#)

Steve -

We haven't received anything from you, as the court ordered. By 2 weeks from last Friday we need to present a proposed pretrial order including a de-duplicated exhibit list, our objections to your exhibits, proposed jury instructions, etc. We also have to file any motions in limine by then and in order to do that we need to know what facts and issues you're intending to pursue. We've now not had the benefit of your draft for 3 of the 14 days we had to work on all this and we're being prejudiced.

Would you please get us your draft by noon tomorrow.

Sent from mobile.

Jeffrey S. Leonard
SACKS TIERNEY P.A., Attorneys
a Member of Meritas Law Firms Worldwide
4250 N. Drinkwater Blvd., Fourth Floor
Scottsdale, Arizona 85251-3693
480.425.2652 DID Telephone
480.425.4952 DID Facsimile
Jeffrey.Leonard@SacksTierney.com
www.sackstierney.com/leonard

On Sep 13, 2017, at 5:53 PM, "stephen@montoyalawgroup.com" <stephen@montoyalawgroup.com> wrote:

Jeff, we will email you our portions of the final pretrial order by October 13 in accordance with the Court's order.

----- Original Message -----

Subject: Flake [IWOV-EMM.FID592013]
From: "Leonard, Jeffrey" <Jeffrey.Leonard@SacksTierney.com>
Date: Wed, September 13, 2017 12:47 pm
To: 'Steve Montoya' <stephen@montoyalawgroup.com>
Cc: "Hiller, Evan F." <Evan.Hiller@sackstierney.com>

Steve –

By the Amended Order Judge Wake entered yesterday, the final Proposal Final Pretrial Order is due on October 27, and so based on the original Order Setting Final Pretrial Conference we are presumably to exchange drafts no later than October 13.

I see that paragraph 5 of the original order says that “[t]he Plaintiff(s) shall have the burden of initiating communications concerning the Proposed Final Pretrial Order.” Can you tell me how you’re going to go about that, and when we can expect an initial draft?

Also, you had mentioned that you would be interested in a mediation. I have discussed that with my clients, and before the county decides whether it’s worth spending time and money on that they would like to know what your current demands are. If you will let me know that, I can have a more informed discussion of the issue.

Jeffrey S. Leonard
Attorney
P. 480.425.2652 | F. 480.425.4952
C. 602.799.2376
Jeffrey.Leonard@SacksTierney.com

-
- [<image002.jpg>](#)
-
<!--[if !vml]--> <!--[endif]-->SacksTierney P.A.
4250 N. Drinkwater Blvd., Fourth Floor
Scottsdale, AZ 85251
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Exhibit E

From: [April Roll](#)
To: [Leonard, Jeffrey](#)
Cc: [Hiller, Evan F.](#); [Steve Montoya](#)
Subject: RE: Flake [IWOV-EMM.FID592013]
Date: Tuesday, October 17, 2017 5:00:38 PM
Attachments: [flake--draft joint proposed final pretrial order.docx](#)
[flake--plaintiffs" trial exhibits.docx](#)
[flake--defendants" trial exhibits.docx](#)

Mr. Leonard and Mr. Hillard:

Please see attached the draft Proposed Final Pretrial Order (in redline), Plaintiffs' Trial Exhibits, and Plaintiffs' objections (noted in red) to Defendants' Trial Exhibits.

Thank you.

April Arvizu
Montoya, Lucero & Pastor, P.A.
3200 North Central Avenue, Suite 2550
Phoenix, Arizona 85012
602-256-6718 (telephone)
602-256-6667 (fax)

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From: Steve Montoya
Sent: Tuesday, October 17, 2017 1:50 PM
To: Leonard, Jeffrey
Cc: Hiller, Evan F.; April Roll
Subject: Re: Flake [IWOV-EMM.FID592013]

You will have it very soon Jeff, thanks for your patience.

Stephen Montoya
Montoya, Lucero & Pastor, PA
3200 North Central Avenue, Ste. 2550
Phoenix, Arizona 85012
602-256-6718 (telephone)
602-256-6667 (fax)
stephen@montoyalawgroup.com

On Oct 16, 2017, at 7:00 PM, Leonard, Jeffrey <Jeffrey.Leonard@SacksTierney.com> wrote:

Steve -

We haven't received anything from you, as the court ordered. By 2 weeks from last Friday we need to present a proposed pretrial order including a de-

duplicated exhibit list, our objections to your exhibits, proposed jury instructions, etc. We also have to file any motions in limine by then and in order to do that we need to know what facts and issues you're intending to pursue. We've now not had the benefit of your draft for 3 of the 14 days we had to work on all this and we're being prejudiced.

Would you please get us your draft by noon tomorrow.

Sent from mobile.

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Scottsdale, Arizona 85251-3693
480.425.2652 DID Telephone
480.425.4952 DID Facsimile
Jeffrey.Leonard@SacksTierney.com
www.sackstierney.com/leonard

On Sep 13, 2017, at 5:53 PM, "stephen@montoyalawgroup.com" <stephen@montoyalawgroup.com> wrote:

Jeff, we will email you our portions of the final pretrial order by October 13 in accordance with the Court's order.

----- Original Message -----
Subject: Flake [IWOV-EMM.FID592013]
From: "Leonard, Jeffrey"
<Jeffrey.Leonard@SacksTierney.com>
Date: Wed, September 13, 2017 12:47 pm
To: 'Steve Montoya' <stephen@montoyalawgroup.com>
Cc: "Hiller, Evan F." <Evan.Hiller@sackstierney.com>

Steve –

By the Amended Order Judge Wake entered yesterday, the final Proposal Final Pretrial Order is due on October 27, and so based on the original Order Setting Final Pretrial Conference we are presumably to exchange drafts no later than October 13.

I see that paragraph 5 of the original order says that "[t]he Plaintiff(s) shall have the burden of initiating communications concerning the Proposed Final Pretrial Order." Can you tell me how you're going to go about that, and when we can expect an initial draft?

Also, you had mentioned that you would be

interested in a mediation. I have discussed that with my clients, and before the county decides whether it's worth spending time and money on that they would like to know what your current demands are. If you will let me know that, I can have a more informed discussion of the issue.

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Attorney
P. 480.425.2652 | F. 480.425.4952
C. 602.799.2376
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<image002.jpg> SacksTierney P.A.
4250 N. Drinkwater Blvd., Fourth Floor
Scottsdale, AZ 85251
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Exhibit F

From: [Hiller, Evan F.](#)
To: ["stephen@montoyalawgroup.com"](mailto:stephen@montoyalawgroup.com)
Cc: [Leonard, Jeffrey](#)
Subject: Flake - Joint Proposed Final Pretrial Order [ST-EMM.FID592016]
Date: Thursday, October 19, 2017 12:00:46 PM
Attachments: [image001.gif](#)

Steve,

Thank you for providing redlined changes to the draft joint proposed final pretrial order, as well as Plaintiffs' trial exhibits and your objections to Defendants' trial exhibits. I'm happy to take the lead on assembling joint exhibit lists that remove duplicates and that put all of the objections in one place, and will try to circulate those to you by early next week at the latest.

I write to point out a few items that need further attention, per the Court's procedures:

1. Contested issues of fact and law – for each issue, the parties are to set forth their contentions. The example from Judge Wake's form pretrial order is this:

E.g., Issue #1: Whether Plaintiff used due care.

Plaintiff Contends: Plaintiff looked both ways before crossing the street...

Defendant Contends: Plaintiff ran out into the street without looking...

We will draft Defendants' contentions, and will insert whatever you draft for Plaintiffs' contentions.

2. List of witnesses – Judge Wake requires the order to identify whether witnesses are fact or expert witnesses. It is my understanding that Austin Flake, Logan Brown, Marie Trombi, and Joseph Arpaio are being offered as fact witnesses; I will insert that as a parenthetical as has been done for Defendants' witnesses. It appears that Tom Stone, Wayne Wisdom, and Melinda Merck (if they testify) are offered as expert witnesses, but you did not make any Rule 26(a)(2) expert disclosures.
3. List of exhibits – we will provide you objections to your exhibits. We are also identified some additional exhibits, which are reflected as exhibits __-__ in the attached updated exhibit list. Please note that Judge Wake requires the parties to specify the basis for the objection (e.g., an objection to foundation must specify why there is a lack of foundation).
4. Depositions to be offered – portions to be read or submitted at trial must be identified by page and line number. We cannot reasonably object and respond to designation of an entire deposition transcript. Please provide the portions of the Arpaio and Trombi deposition transcripts that you intend to offer, so that we can evaluate and make any evidentiary objections and/or additional designations under Rule 32(a)(4).
5. Procedures for expediting trial – Judge Wake requires the parties to discuss and report on all procedures that might be used to expedite trial, including but not limited to six specific examples:

(a) presenting stipulated summaries of deposition testimony rather than reading deposition excerpts; (b) editing videotaped depositions to limit the amount of time required for presentation; (c) using summary exhibits in place of voluminous documentary evidence; (d) stipulations on authenticity and foundation; (e) presenting direct expert testimony through summary or written reports; (f) using the courtroom technology to expedite the presentation of evidence.

I believe that we need to have a conference call to discuss whether any of these procedures would expedite trial; after our discussions, I'm happy to draft the "report" section of the Order on our discussions for your review.

6. Proposed forms of verdict – you have not provided any proposed forms of verdict. Please let us know whether you want to stipulate to the forms attached as Exhibit E or provide your own forms.
7. Joint proposed voir dire questions – please provide us with your objections (if any) or stipulation to Defendants' proposed voir dire questions.
8. Joint proposed jury instructions – we haven't received your input on this yet. Please let us know whether you stipulate to any of the standard 9th Circuit instructions that we've listed, as well as providing (i) any jury instructions proposed by Plaintiffs and (ii) whether you stipulate to or object to the non-form instructions offered by Defendants.
9. Certification – I'll fill in the court's required certifications.
10. Edits to uncontested issues of fact and law, contested issues of fact and law, and joint pretrial statement – we agree with some of your edits, but disagree with others. Rather than exchanging further dueling drafts, does it make sense to have a telephone conversation about our differences?

Please provide your availability to meet and confer.

Thanks,
~Evan

Evan F. Hiller
Attorney
P. 480.425.2661 | F. 480.425.4961
Evan.Hiller@SacksTierney.com



Scottsdale, AZ 85251
www.sacktierney.com

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Exhibit G

From: [Hiller, Evan F.](#)
To: ["stephen@montoyalawgroup.com"](mailto:stephen@montoyalawgroup.com)
Cc: [Leonard, Jeffrey](#)
Subject: RE: Flake - Joint Proposed Final Pretrial Order [ST-EMM.FID592016]
Date: Friday, October 20, 2017 10:36:10 AM
Attachments: [image001.gif](#)

Steve,

In follow-up to my earlier e-mail, and reserving for a telephone meet-and-confer the topic of edits to the existing contested issues of fact, we would like to add to the contested issues of fact the issue of non-parties at fault. Appropriate language for that issue of fact could be something along the lines of "Whether non-parties to this case contributed to Plaintiffs' alleged damages, and if so, in what proportion."

Again, please provide your availability to meet and confer regarding procedures for expediting trial and your proposed edits to the undisputed facts/law, contested facts/law, and joint statement.

Evan F. Hiller
Attorney
P. 480.425.2661 | F. 480.425.4961
Evan.Hiller@SacksTierney.com



Sacks Tierney P.A.
4250 N. Drinkwater Blvd., Fourth Floor
Scottsdale, AZ 85251
www.sackstierney.com

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From: Hiller, Evan F.
Sent: Thursday, October 19, 2017 12:08 PM
To: 'stephen@montoyalawgroup.com'
Cc: Leonard, Jeffrey
Subject: RE: Flake - Joint Proposed Final Pretrial Order [ST-EMM.FID592016]

Steve,

I forgot to attach the attachment. New exhibits are 40-49.

Evan F. Hiller
Attorney
P. 480.425.2661 | F. 480.425.4961
Evan.Hiller@SacksTierney.com



Sacks Tierney P.A.
4250 N. Drinkwater Blvd., Fourth Floor

Scottsdale, AZ 85251
www.sacktierney.com

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From: Hiller, Evan F.
Sent: Thursday, October 19, 2017 12:01 PM
To: 'stephen@montoyalawgroup.com'
Cc: Leonard, Jeffrey
Subject: Flake - Joint Proposed Final Pretrial Order [ST-EMM.FID592016]

Steve,

Thank you for providing redlined changes to the draft joint proposed final pretrial order, as well as Plaintiffs' trial exhibits and your objections to Defendants' trial exhibits. I'm happy to take the lead on assembling joint exhibit lists that remove duplicates and that put all of the objections in one place, and will try to circulate those to you by early next week at the latest.

I write to point out a few items that need further attention, per the Court's procedures:

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E.g., Issue #1: Whether Plaintiff used due care.

Plaintiff Contends: Plaintiff looked both ways before crossing the street...

Defendant Contends: Plaintiff ran out into the street without looking...

We will draft Defendants' contentions, and will insert whatever you draft for Plaintiffs' contentions.

2. List of witnesses – Judge Wake requires the order to identify whether witnesses are fact or expert witnesses. It is my understanding that Austin Flake, Logan Brown, Marie Trombi, and Joseph Arpaio are being offered as fact witnesses; I will insert that as a parenthetical as has been done for Defendants' witnesses. It appears that Tom Stone, Wayne Wisdom, and Melinda Merck (if they testify) are offered as expert witnesses, but you did not make any Rule 26(a)(2) expert disclosures.
3. List of exhibits – we will provide you objections to your exhibits. We are also identified some additional exhibits, which are reflected as exhibits __-__ in the attached updated exhibit list. Please note that Judge Wake requires the parties to specify the basis for the objection (e.g., an objection to foundation must specify why there is a lack of foundation).
4. Depositions to be offered – portions to be read or submitted at trial must be identified by page and line number. We cannot reasonably object and respond to designation of an entire deposition transcript. Please provide the portions of the Arpaio and Trombi deposition transcripts that you intend to offer, so that we can evaluate and make any evidentiary objections and/or additional designations under Rule 32(a)(4).
5. Procedures for expediting trial – Judge Wake requires the parties to discuss and report on all procedures that might be used to expedite trial, including but not limited to six specific

examples:

(a) presenting stipulated summaries of deposition testimony rather than reading deposition excerpts; (b) editing videotaped depositions to limit the amount of time required for presentation; (c) using summary exhibits in place of voluminous documentary evidence; (d) stipulations on authenticity and foundation; (e) presenting direct expert testimony through summary or written reports; (f) using the courtroom technology to expedite the presentation of evidence.

I believe that we need to have a conference call to discuss whether any of these procedures would expedite trial; after our discussions, I'm happy to draft the "report" section of the Order on our discussions for your review.

6. Proposed forms of verdict – you have not provided any proposed forms of verdict. Please let us know whether you want to stipulate to the forms attached as Exhibit E or provide your own forms.
7. Joint proposed voir dire questions – please provide us with your objections (if any) or stipulation to Defendants' proposed voir dire questions.
8. Joint proposed jury instructions – we haven't received your input on this yet. Please let us know whether you stipulate to any of the standard 9th Circuit instructions that we've listed, as well as providing (i) any jury instructions proposed by Plaintiffs and (ii) whether you stipulate to or object to the non-form instructions offered by Defendants.
9. Certification – I'll fill in the court's required certifications.
10. Edits to uncontested issues of fact and law, contested issues of fact and law, and joint pretrial statement – we agree with some of your edits, but disagree with others. Rather than exchanging further dueling drafts, does it make sense to have a telephone conversation about our differences?

Please provide your availability to meet and confer.

Thanks,
~Evan

Evan F. Hiller
Attorney
P. 480.425.2661 | F. 480.425.4961
Evan.Hiller@SacksTierney.com



Sacks Tierney P.A.
4250 N. Drinkwater Blvd., Fourth Floor
Scottsdale, AZ 85251
www.sackstierney.com
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Exhibit H

From: [Leonard, Jeffrey](#)
To: ["Stephen"](#)
Cc: [Hiller, Evan F.](#)
Subject: RE: Flake [IWOV-EMM.FID592016]
Date: Monday, October 23, 2017 3:52:34 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)

Ok. Call my direct line, 480-425-2652.

Jeffrey S. Leonard
Attorney
P. 480.425.2652 | F. 480.425.4952
C. 602.799.2376
Jeffrey.Leonard@SacksTierney.com

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SacksTierney P.A.
4250 N. Drinkwater Blvd., Fourth Floor
Scottsdale, AZ 85251
www.sackstierney.com

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From: Stephen [mailto:stephen@montoyalawgroup.com]
Sent: Monday, October 23, 2017 3:31 PM
To: Leonard, Jeffrey
Cc: Hiller, Evan F.
Subject: Re: Flake [IWOV-EMM.FID592016]

What about today at 5:00 pm?

Stephen Montoya
Montoya, Lucero & Pastor, PA
3200 North Central Avenue, Ste. 2550
Phoenix, Arizona 85012
602-256-6718 (telephone)
602-256-6667 (fax)
stephen@montoyalawgroup.com

On Oct 23, 2017, at 3:15 PM, Leonard, Jeffrey <Jeffrey.Leonard@SacksTierney.com> wrote:

Steve –

We really need to have a conference if the final pretrial report is going to get filed on Friday as ordered. When can we do that?

JSL

Jeffrey S. Leonard
Attorney
P. 480.425.2652 | F. 480.425.4952
C. 602.799.2376
Jeffrey.Leonard@SacksTierney.com

<image002.jpg>SacksTierney P.A.
4250 N. Drinkwater Blvd., Fourth Floor
Scottsdale, AZ 85251
www.sackstierney.com
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Exhibit I

From: [Leonard, Jeffrey](#)
To: ["Steve Montoya"](#)
Cc: [Hiller, Evan F.](#)
Subject: Flake [IWOV-EMM.FID592016]
Date: Wednesday, October 25, 2017 2:03:20 PM
Attachments: [image001.jpg](#)
 [image002.jpg](#)

Steve –

Recall that when we spoke on Monday I asked you to get us your transcript designations ASAP (and not Thursday), as we wouldn't otherwise have sufficient time to review them and make any necessary objections and/or cross-designations. So it's now Wednesday mid-afternoon, and we don't have them. There's a lot still to do before the proposed pretrial order gets filed on Friday, and we're about out of time to do anything meaningful with transcript designations.

JSL

Jeffrey S. Leonard
Attorney
P. 480.425.2652 | F. 480.425.4952
C. 602.799.2376
Jeffrey.Leonard@SacksTierney.com

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SacksTierney P.A.
4250 N. Drinkwater Blvd., Fourth Floor
Scottsdale, AZ 85251
www.sackstierney.com
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From: [Leonard, Jeffrey](#)
To: ["Steve Montoya"](#)
Cc: [Hiller, Evan F.](#)
Subject: RE: Flake [IWOV-EMM.FID592016]
Date: Wednesday, October 25, 2017 4:38:11 PM
Attachments: [image001.jpg](#)
 [image003.jpg](#)
 [image004.jpg](#)

Steve –

I should have added to my prior email that we still need the following from you:

- jury instructions;
- voir dire;
- verdict forms
- objections, if any, to our additional exhibits;
- your position or comments on the rewritten contested issues and joint statement of the case;
- your position following our discussion on Monday on evidence concerning the air conditioning unit;
- your position following our discussion on Monday on the court's ruling concerning Det. Trombi's lack of malice.

Some of these items require responses from us (for example, our objections to your jury instructions, voir dire, and verdict forms), and it simply isn't fair to us to put us in this position, where we just don't have sufficient time to respond appropriately.

JSL

Jeffrey S. Leonard
Attorney
P. 480.425.2652 | F. 480.425.4952
C. 602.799.2376
Jeffrey.Leonard@SacksTierney.com

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SacksTierney P.A.
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Scottsdale, AZ 85251
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From: Leonard, Jeffrey
Sent: Wednesday, October 25, 2017 2:03 PM
To: 'Steve Montoya'
Cc: Hiller, Evan F.

Subject: Flake [IWOV-EMM.FID592016]

Steve –

Recall that when we spoke on Monday I asked you to get us your transcript designations ASAP (and not Thursday), as we wouldn't otherwise have sufficient time to review them and make any necessary objections and/or cross-designations. So it's now Wednesday mid-afternoon, and we don't have them. There's a lot still to do before the proposed pretrial order gets filed on Friday, and we're about out of time to do anything meaningful with transcript designations.

JSL

Jeffrey S. Leonard
Attorney
P. 480.425.2652 | F. 480.425.4952
C. 602.799.2376
Jeffrey.Leonard@SacksTierney.com

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Scottsdale, AZ 85251
www.sackstierney.com
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